IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 19988 of 2007(D)

OS.424/2006 of PRL.MUNSIFF COURT,THRISSUR
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PETITIONER:

N.A. RAJU,
S/O. NEDUMPARAMBIL ANTHAPPAN @ ANTONY,
AGED 41, POONKUNNAM DESOM, THRISSUR VILLAGE,
THRISSUR TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)
SRI.K.RAVI (PARIYARATH)

RESPONDENTS:

THOMSON, AGED 54,
S/O. KIDANGAN FRANCIS, POONKUNNAM DESOM,
THRISSUR VILLAGE, THRISSUR TALUK.

BY ADV. SRI.K.P.SREEKUMAR
SRI.P.M.SATHEESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE PLAINT IN O.S. NO. 424/2006 ON THE FILE OF THE PRINCIPAL MUNSIFF COURT, THRISSUR DATED 07.02.2006.

EXT.P2: A TRUE COPY OF THE I.A. NO. 1509/2006 IN O.S. NO. 424/2006 ON THE FILE OF THE PRINCIPAL MUNSIFF COURT, THRISSUR DATED 21.2.2006.

EXT.P3: A TRUE COPY OF THE PETITION FILED BY THE PETITIONER HEREIN DATED 21.02.2006 AS I.A. NO. 1508/2006.

EXT.P4: A TRUE COPY OF THE REPORT BY THE ADVOCATE COMMISSIONER WITH THE REPORT OF THE CIVIL ENGINEER DATED 27.03.2006.

EXT.P5: A TRUE COPY OF THE OBJECTIONS FILED BY THE RESPONDENT HEREIN TO EXT.P4 REPORT DATED 06.06.2006.

EXT.P6: A TRUE COPY OF THE PANEL OF EXPERTS SUBMITTED BY THE PETITIONER BEFORE THE MUNSIFF COURT, THRISSUR DATED 21.2.2006.

EXT.P7: A TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER HEREIN AS I.A. NO. 3662/2006 IN I.A. NO. 1508/2006 IN O.S. NO. 424/06 DATED 06.06.2006 BEFORE THE PRINCIPAL MUNSIFF COURT, THRISSUR.

EXT.P8: A TRUE COPY OF THE ORDER PASSED BY THE PRINCIPAL MUNSIFF COURT, THRISSUR IN I.A. NO. 3662/2006 IN O.S. NO. 424/06 DATED 26.03.2007 ON THE FILED OF THE SAID COURT.

/True Copy/

P.A to Judge.

M.N. KRISHNAN , J

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W.P.(C) NO. 19988 OF 2007

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Dated this the 20th day of August, 2007.

JUDGMENT

This writ petition is filed seeking to set aside Ext.P8 order in O.S. No. 424/2006 of the Principal Munsiff Court, Thrissur. The suit is relating to damages and for consequential injunction etc. on the ground that the building belonging to the plaintiff had been destroyed on account of the action of the defendant. The court appointed a Commissioner and a Civil engineer to estimate the damages and report about the technical aspects of the matter and they had submitted a detailed report in that regard. Then the defendant moved the present application with a prayer to appoint a structural engineer who is more competent to look into the structural aspects of the building and get a report. The court did not entertain that application as the law stands today this court has deprecated the practice of issuing successful commissions for reports without setting aside the previous reports. Obviously, the reason is that conflicting materials will be made available and it will be very difficult for the court to arrive

at a decision. So this Court held that there must be an application to set aside the commissioner's plan and report and if the party is able to convince that it is wrong, the court can set aside the same and issue fresh commission and in matters where only remission is necessary to cure the defects, the court has the power to do the same as well. Now the report and estimate prepared by the Commissioner and Civil engineer appointed by the court is very much available in the case bundle. Without setting aside the same or at least finding out the defects of the report, it may not be correct on the part of the court to get any other expert report from a structural engineer. Therefore, I find that the court below was justified in not entertaining this application at that stage. At the same time, it has to be stated that the defendants should be given an opportunity if it is really aggrieved and if there is anything wrong in the Commissioner's and Civil engineer's report to challenge the same, adduce evidence and in case of satisfaction, the court can either set aside the Commissioner's report and estimate or remit the Commissioner's report and estimate and the same Commissioner

along with the Civil engineer and Structural engineer may be directed to inspect the property to give a full fledged report as required by the parties. In order to find out the said factors, the defendant is given an opportunity to move the court below within a time frame of six weeks from today, an application either for setting aside the Commissioner's report or for remitting the Commissioner's report and the court after giving notice to either sides and inviting objection, hear the matter and if necessary adduce evidence and dispose of that petition in accordance with law. The court may also dispose of the application within a period of two months from the date of receipt of the application.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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